

1 McGREGOR W. SCOTT
2 United States Attorney
3 ANNE PINGS
4 Assistant U.S. Attorney
5 501 I Street, Suite 10-100
6 Sacramento, California 95814
7 Telephone: (916) 554-2785

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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE EASTERN DISTRICT OF CALIFORNIA

13

14 UNITED STATES OF AMERICA,) CR. NO. S-04-398-DFL
15 Plaintiff,)
16 v.) SENTENCING ORDER
17 ANDREW A. KROGH,)
18 Defendant.)
19)
20)
21)
22)

23 On August 25, 2005, the matter came before the Court for
sentencing. The defendant appeared and was represented by Kim Ryan.
The United States was represented by Assistant U.S. Attorney Anne
Pings. The United States Probation Office was represented by Terri
Wilkins, the presentence report writer.

Prior to imposing sentence, the Court considered the following:
the Presentence report prepared by the United States Probation

1 Office, defendant's sentencing memorandum, the government's response
2 to the defendant's sentencing memorandum, and various letters from
3 family members and friends.

4 The Court heard and considered the defendant's arguments as to
5 why he should be sentenced under the "sporting exception" to the
6 firearms sentencing guideline set forth at United States Sentencing
7 Guidelines Section 2K2.1 which applies only where the firearms were
8 possessed "solely for lawful sporting purposes or collection."
9 Because defendant kept two guns under his bed, one of them loaded,
10 for his protection, they were not possessed "solely" for collection
11 purposes. Consistent with the plain language of the guideline
12 provision and the case law interpreting it set forth in the
13 government memorandum, the Court found that the defendant was
14 ineligible for the guideline reduction for this reason.

15 The defendant asked the Court to sentence the defendant below
16 the guidelines on a variety of equitable theories. The Court
17 considered that the defendant's prior felony conviction was
18 essentially possession of a pipe bomb, and not a technical violation
19 as portrayed by his friends and family in their letters to the
20 Court. The Court also considered that there was evidence of other
21 ongoing criminal activity in the defendant's life at the time of his
22 arrest, including the presence of methamphetamine; the fact that
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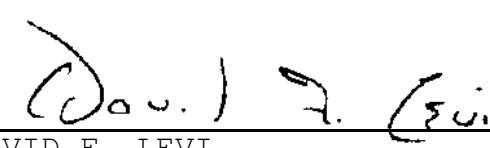
1 several of these guns were stolen; the defendant's connection to the
2 AR-15, another weapon which was also stolen; vast quantities of live
3 ammunition in his home; the fact that, over a period of years, he
4 has been falsely stating that he does not have a felony conviction
5 on numerous applications to buy guns; that he is dealing with people
6 who are stealing from other people who are also drug users; and that
7 he was unorthodox in his acquisition of guns, buying guns from
8 strangers, disregarding the risk that they might be stolen or have
9 been used in a crime.

10 For these reasons, the Court declined to depart downward under
11 the sentencing guidelines. In addition, under 18 U.S.C. § 3553(a),
12 the Court found that the reasonable sentence was 18 months, which is
13 the bottom of the guideline range. The Court found it was the
14 appropriate sentence given the number of guns, the history of gun
15 dealing, and the reckless way in which the defendant went about
16 collecting the weapons.

17 For these reasons and the reasons stated in open court, the
18 Court imposed the sentence as set forth in the Judgement filed in
19 this case.

20 **IT IS SO ORDERED.**

21 Dated: 10/19/2005
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DAVID F. LEVI

United States District Judge